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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 149

O. C. LEE, Individually, and J. C. LITSEY, Individually and Both as Representatives of Machinists Employed by Louisville & Nashville Railroad Company at Its South Louisville Roundhouse on February 17, 1957, Et Al.,

Petitioners,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ET AL.,

Respondents.

On Petition for Writ of Certiorari To the Court of Appeals of Kentucky

BRIEF IN OPPOSITION FOR RESPONDENTS OTHER THAN LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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INDEX

	Page
Question Presented	1
Statement of the Case	2
Argument	4
Exclusive Jurisdiction of the Adjustment Board and Finality of its Award	5
Absence of any Actionable Discrimination	9
Absence of any Denial of Due Process by the Board	11
Conclusion	13
Certificate of Service	15

CASES CITED

Barnett v. Pennsylvania-Reading Seashore Lines, 245 F. (2d) 579, 582	12
Brotherhood of L. E. v. Missouri-Kansas-T. R. Co., 363 U.S. 528, 531	7, 8
Brotherhood of R. T. v. Chicago River & I. R. Co., 353 U.S. 30	7
Conley v. Gibson, 355 U.S. 41	9
Elder v. New York Cent. R. Co., 152 F. (2d) 361	8
Ellerd v. Southern Pacific R. Co., 241 F. (2d) 541	12

Page

Hippensteel v. System Federation No. 9, 337 Mich. 351, 59 N.W. (2d) 278 7

Moore v. Illinois Central R. Co., 312 U.S. 630 ..... 6, 8

Order of Railway Conductors v. Southern R. Co., 339 U.S. 255 5

Pennsylvania R. Co. v. Day, 360 U.S. 548 8

Rose v. Great Northern Ry. Co., 268 F. (2d) 674 7

Slocum v. Delaware, L. & W. R. Co., 339 U.S. 239, 242 ..... 5, 6, 8

Steele v. L. & N. R. Co., 323 U.S. 192 9

Trailmobile Co. v. Whirls, 331 U.S. 40, 53, footnote 21 and cases cited 8

Union P. R. Co. v. Price, 360 U.S. 601 ..... 7, 12

STATUTES

Railway Labor Act (45 U.S.C., Sec. 151 et seq.) 2, 5

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QUESTION PRESENTED

Did a state court possess jurisdiction of an action for a declaration of seniority rights under a collective bargaining agreement, brought by railroad employees challenging an interpretation placed upon such agreement by their employer and acquiesced in by their statutory bargaining representatives, after obtaining an award of the National Railroad Adjustment Board contrary to their contentions, in the absence of hostile or invidious discrimination by their bargaining representative or denial of due process by the Board?

STATEMENT OF THE CASE

This action involves an attempt by a group of railroad employees to obtain, by judicial decree, seniority rights and status superior to those which have been accorded them under an interpretation and application placed upon the controlling collective bargaining agreement by their employer, acquiesced in by their bargaining representatives, and approved by the National Railroad Adjustment Board, the statutory administrative tribunal created by Congress to make final and binding determinations of such matters in the railroad industry.

Petitioners and those whom they purport to represent are so-called shopcraft employees of respondent Louisville and Nashville Railroad Company. The respondent labor organizations are the statutory bargaining representatives, under the Railway Labor Act (45 U.S.C. Sec. 151 et seq.), of the respective crafts and classes in which petitioners are employed, and negotiated with respondent Railroad the collective bargaining agreements under which petitioners assert their claim to superior seniority rights and status.

The applicable bargaining agreements provide for what is known as a "point" seniority system, under which an employee's seniority rights are acquired at and limited to the "point" at which he is employed. For many years there existed two separate, though adjacent, seniority points on respondent Railroad's property, known as the South Louisville Roundhouse and the South Louisville Shops. In 1957 the Railroad discontinued operations at the Roundhouse, where petitioners were employed and had accumulated their seniority, and transferred the work to the South Louisville Shops.

The Roundhouse employees were laid off and accorded the status of "furloughed" employees at the Roundhouse

"point". The jobs which opened up at the Shops "point" as a result of the transfer of work were assigned on the basis of established seniority rosters of employees at that point. Petitioners, who held seniority only on the Roundhouse rosters, could only obtain what jobs were left, and established seniority on the Shops' rosters only as of the date they went to work at that point.

Petitioners argued that under the circumstances they were not properly laid off or furloughed, that there had been no legitimate "reduction in force" or closing of a point, and that they were denied their seniority rights under the applicable agreements. The Railroad took the position that its handling of the transaction was the proper interpretation and application of the point seniority requirements of the agreements. Petitioners allege that representatives of the respondent labor organizations agreed that the Railroad's interpretation of the agreements was correct.

Upon being laid off petitioners filed protests which were denied by the Railroad. They thereafter processed their claims to the National Railroad Adjustment Board, Second Division, which considered the dispute on its merits and issued its Award No. 2899 denying petitioners' claim. This action was then brought, seeking a declaration by the court that the Railroad, these respondents, and the Board were wrong in their interpretation of the collective bargaining agreements, and asking protection of petitioners' alleged seniority rights. Suit was expressly brought on the collective bargaining agreements, the complaint describing the action as one "for a declaration of rights under contracts between said defendant Railroad Company and said defendant unions."

The case was presented to the trial court on these respondents' motion to dismiss, and a similar motion to

dismiss, and alternative motion for summary judgment, filed by respondent Railroad, which motions were granted on the ground of the court's lack of jurisdiction of the subject matter. After discussing the well established principles of exclusive jurisdiction of the National Railroad Adjustment Board to determine disputes over the interpretation and application of railroad collective bargaining agreements, and the final and binding effect of its decisions, Judge Lampé in his opinion (Appendix to Petition, pp. 1a-5a) went on to point out the failure of the complaint, as amended, to make out a case of actionable "discrimination" which would avoid the effect of these principles, as well as the lack of substance to petitioners' contentions that the Board lacked jurisdiction of the dispute.

The Court of Appeals of Kentucky, after reviewing the facts and contentions of the parties, recognized the exclusive jurisdiction of the National Railroad Adjustment Board and the finality of its awards, adopted the opinion of the trial court as its opinion, and affirmed the dismissal of the case for lack of jurisdiction. (Appendix to Petition, pp. 9a-11a.)

ARGUMENT

There is nothing in the record herein or the arguments advanced by petitioners to warrant a review of the decision below by this Court.

Under the heading "Reasons for Granting the Writ" (p. 19) petitioners have simply urged that their seniority ought to have been dovetailed. The only statement in the Petition of any basis for granting the writ is the general allegation at page 11 that " . . . the Court of Appeals of Kentucky has decided the questions as to the jurisdiction

of the Court to hear this action different from, and contrary to, applicable decisions by this Court."

Contrary to the assertions of petitioners, we submit the dismissal of this action for lack of jurisdiction not only did not conflict with, but was clearly required by the applicable decisions of this Court.

Exclusive Jurisdiction of the Adjustment Board and Finality of its Award

Petitioners have cited a number of decisions in support of their argument that the courts, including the Kentucky courts, have in the past undertaken to protect rights under collective bargaining agreements, recognizing them as "property" and hence susceptible of judicial enforcement. But it is now so well established as to be beyond argument that insofar as collective bargaining agreements in the railroad industry are concerned, the jurisdiction of the courts, both state and federal, was terminated in 1934 when Congress amended the Railway Labor Act (45 U.S.C., Sec. 151 et seq.) to create the National Railroad Adjustment Board for the specific purpose of settling disputes over the interpretation and application of those agreements.

The leading decisions of this Court in *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, and *Order of Railway Conductors v. Southern R. Co.*, 339 U. S. 255, decided April 10, 1950, have been uniformly followed in numerous subsequent decisions of both state and federal courts.

That the present dispute is precisely the sort over which the statute gives the Board jurisdiction is apparent not only from the language of the amended complaint, but also from the repeated assertions in the Petition describing the action as one for a declaration of rights under existing

collective bargaining agreements. (Petition, pp. 3, 6, 8, 17-18, 24, 41.) Thus at the outset, petitioners state (p. 6):

> "In this action, petitioners are asking, for themselves and the rest of the sixty-six employees on the Roundhouse rosters, a *Declaration of Rights* in a controversy with the Louisville and Nashville Railroad Company and with the four International Associations or Brotherhoods and their joint agency, System 91: *under said collective bargaining agreements.* The *only* claims made herein by the 66 men on the Roundhouse rosters, *are the specific contract rights to seniority* . . . " (Emphasis supplied.)

Similarly, the argument of petitioners concludes (p. 41) with the statement that they are entitled to have:

> " . . . a judicial declaration of rights in regard to the bargaining agreements which were in effect on February 18, 1957 and remain to this day with no changes therein."

There is no question here, of course, of petitioners' claims falling within the "wrongful discharge" exception to the *Slocum* doctrine, illustrated by *Moore v. Illinois Central R. Co.*, 312 U. S. 630. They were not discharged but sue as employees, under the applicable collective bargaining agreements, seeking to establish rights to seniority status and attendant benefits superior to those which they currently possess under the agreement interpretation which they challenge.

At the outset of this dispute petitioners apparently recognized the necessity of submitting their claims to the Board. They processed the dispute, with competent counsel representing them, through a hearing and decision on the merits by the Board's Second Division.

This Court has made it very clear that the *Slocum*

doctrine is not simply one of exhaustion of remedies as a prerequisite to a court determination on the merits of these disputes, but is in fact a substitution of a system of final settlement of disputes by administrative tribunals rather than litigation and judicial determination. *Union P. R. Co. v. Price*, 360 U. S. 601. As the Court noted in *Brotherhood of R. T. v. Chicago River & I. R. Co.*, 353 U. S. 30, and *Brotherhood of L. E. v. Missouri-Kansas-T. R. Co.*, 363 U. S. 528, the Adjustment Board procedure constitutes a system of compulsory arbitration for this type of dispute.

In attempting to escape the binding effect of the Adjustment Board's adverse award petitioners, although having initially sought relief from the Board, now claim that it had no jurisdiction to resolve the dispute because it was a union-membership controversy, and because it related to future operations of the Railroad. Both of these contentions are without substance.

As to the first, it is clear that the action complained of was that of the Railroad. Indeed, in the portion of their argument immediately preceding their categorization of this as a union-membership controversy, petitioners state that "... the *carrier* initiated the contract violation and actively caused the discrimination." (Petition, p. 34; emphasis supplied.) An employee's claim of a contract violation by a railroad is not removed from the Board's jurisdiction simply because the union is in accord with the interpretation which the railroad has placed on the contract. *Hippensteel v. System Federation No. 9*, 337 Mich. 351, 59 N. W. (2d) 278, *Rose v. Great Northern Ry. Co.*, 268 F.(2d) 674. Petitioners' argument to the effect that any question of contract interpretation which an individual employee wishes to dispute with his employer and union may be thrown into the judicial arena, would completely thwart "the superseding purpose of the Railway

labor Act to establish a system of compulsory arbitration for this type of dispute." (*Brotherhood of L. E. v. Missouri-Kansas T. R. Co.*, 363 U. S. 528, 531.)

Petitioners' second contention, that disputes involving future operations of the Railroad are not within the Board's jurisdiction, is diametrically opposed to this Court's decisions. In *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 242, the Court emphasized the importance of having the Adjustment Board decide disputes the settlement of which " . . . would have prospective as well as retrospective importance to both the railroad and its employees, since the interpretation accepted would govern future relations of those parties." The reservation to the courts of the wrongful discharge type of case represented by the *Moore* decision was justified on the ground that such an action " . . . does *not* involve questions of future relations between the railroad and its other employees." (339 U. S. 344; emphasis supplied.) See also *Pennsylvania R. Co. v. Day*, 360 U. S. 548.

Finally, petitioners' contention that the Board did not in fact decide the questions submitted to it, and upon which they asked the Kentucky courts to pass, is readily refuted by reference to the Board's Findings, as set forth at pages 14a-15a of the Appendix to the Petition. As the Board pointed out, the nature and scope of seniority rights is determined by the contract creating them. (*Trailmobile Co. v. Whirls*, 331 U. S. 40, 53, footnote 21 and cases cited; *Elder v. New York Cent. R. Co.*, 152 F.(2d) 361.) Contrary to petitioners' arguments that they should have been given dovetailed seniority in the Shops on the theory that they were in the same "place" as the Roundhouse, and seniority was based on "geographical area" (Petition, p. 39), the Board plainly held that under the agreement these facilities constituted two separate seniority points.

"Question (a)" (Petition, p. 37) submitted to the Board was plainly answered by it; the answer being that contrary to the assumption stated in the question, that the work was being done "in the same places", it was not being done in the same places for purposes of the contractual seniority system.

Absence of any Actionable Discrimination

By liberal use of the word "discrimination", petitioners seek to escape the impact of the Board's exclusive jurisdiction and its adverse award. Although both the original and amended complaints, as well as the Petition herein, make it clear that the present action relies on, rather than challenges, the agreements between the Railroad and the bargaining representatives, and that the matter in dispute is simply the question of the proper interpretation of those agreements, petitioners rely upon cases involving joint action by a union and railroad to deprive Negro employees of rights accorded to their fellow white employees, either by formal written agreements spelling out the different treatment to be accorded (*Steele v. L. & N. R. Co.*, 323 U. S. 192), or by verbal understandings that contract rights superficially accorded to all employees would be denied Negroes by the expedient of having the union refuse to process their complaints, while enforcing the rights of white employees. (*Conley v. Gibson*, 355 U.S. 41.)

The inapplicability of these cases is immediately apparent. Here, there is no allegation of any hostile or unlawful motive on the part of respondents. No criterion, such as race, or union membership or non-membership, is asserted as being the basis for any discrimination. There is no showing of anything in the contracts, written or ver-

bal, which differentiates or distinguishes between or accords unequal rights to, employees similarly situated. There is no claim that the applicable provisions of the agreements sued upon have been interpreted more favorably for other employees than for petitioners.

Here, aside from alleging the bare conclusion of "discrimination", the only thing petitioners have accused respondents of is that they did not agree with petitioners as to the proper interpretation and application of the point seniority provisions of the bargaining agreements. And while petitioners urge that "the issue of discrimination before the Court in this action has not been heard or determined by that Board" (Petition, p. 10), the express purpose of the present action is to obtain a declaratory judgment in effect reversing the Board's ruling as to the correct agreement interpretation.

The fact that the point seniority system prescribed by the agreements may have had an unfavorable effect on petitioners, which a different seniority system might not have had, does not mean that they have been the victims of hostile or invidious discrimination. What has happened to them has simply been a result of the operation of the "point" seniority system prevalent in the railroad industry. For years they enjoyed the protection afforded by that system, against being displaced by older employees who might be laid off at other "points" on the railroad. Under a different system, such as division-wide or carrier-wide seniority, they might have had "bumping", or "displacement" rights at the South Louisville Shops; but in the meantime, over the years, they would have been subject to being "bumped" at the Roundhouse. But whichever system were adopted, its results would not constitute actionable discrimination.

It is apparent that if petitioners' contentions as to jurisdiction of the courts over their "discrimination" charges were upheld, then all an employee would ever have to do, to defeat the exclusive and final jurisdiction of the Adjustment Board, would be to say that because he disagreed with the manner in which the contract had been interpreted and applied, and because its application was less favorable to him than that which he claimed to be proper, he was being "discriminated against". Such clearly is not the law.

Finally, petitioners appear to contend that the acquiescence of their bargaining representatives in the Railroad's interpretation of the agreements constituted discrimination. But as the trial court so aptly put it, " . . . freedom from discrimination does not require that the union in every grievance agree with its aggrieved member." (Appendix to Petition, p. 4a.) Indeed, we can think of nothing more disruptive of stable labor relations, or productive of complete chaos in the administration of collective bargaining agreements, than a requirement that a union must process each and every employee grievance, whether it thought it had merit or not, whether or not it was consistent with previous interpretations of the agreement, and whether or not it conflicted with contentions of other employees who might be unfavorably affected if the claim were sustained, and would in their turn demand their right to be represented.

Absence of any Denial of Due Process by the Board

In this action petitioners attacked the award of the Adjustment Board not on the basis of any denial of a full and fair hearing, lack of notice, or any other defect amounting to a denial of due process, but essentially on the basis

that it constituted an erroneous interpretation of the collective bargaining agreements which should be remedied by the courts in the "declaration of rights" under those agreements which is sought here. For the courts to have entertained such an action would, as we have noted, have been in direct conflict with the decision of this Court in *Union P. R. Co. v. Price*, 360 U. S. 601.

In the *Price* case, after discussing the intent of Congress to foreclose litigation over disputes of this sort, the Court stated that aside from the statutory right of action to enforce favorable awards of the Board, the only remaining area of litigation contemplated was "the review sought of an award claimed to result from a denial of due process of law, see *Ellerd v. Southern Pacific R. Co.*, 241 F. (2d) 541; *Barnett v. Pennsylvania-Reading Seashore Lines*, 245 F. (2d) 579, 582." (360 U. S., 616.)

In the *Ellerd* case, the court summarized its findings on this point as follows:

> "The sound conclusion to be drawn from the statute and the various decisions, seems to be that, in the absence of any question as to the regularity of proceedings before the board, for lack of notice or other defect preventing due process of law, the district court has no right to review an order of the board. If that body has jurisdiction and proceeds according to constitutional guarantees, its decision is, in the words of the statute, final." (241 F. (2d), 544.)

Other decisions to the same effect were cited by the court in the *Ellerd* case.

Similarly, in denying the right of review in the *Barnett* case, the court said:

> "There is no allegation, however, that the Board refused to hear his complaint, that it failed to give

notice of its hearing or any other allegations which point to a violation of procedural due process." (245 F. (2d), 581.)

And the court concluded that cases preserving the right of review if the Board had acted unconstitutionally or gone outside its jurisdiction "are not in point in this case which is a plain challenge to the decision reached by the Board on the merits of the plaintiff's claim." (245 F. (2d), 582.)

Neither the complaint nor the amended complaint herein contained any allegations of denial of due process by the Board. In the absence of such allegations, petitioners may not obtain a court review of the claims which they unsuccessfully urged before the Board.

CONCLUSION

In the foregoing discussion we have shown that the present dispute is one with respect to the proper interpretation and application of a railroad collective bargaining agreement which lies within the exclusive jurisdiction of the National Railroad Adjustment Board; that it was submitted to that tribunal by petitioners and decided adversely to their contentions; and that the Board's decision is final and conclusive, and not subject to the judicial review on its merits which petitioners sought in their complaint for declaratory judgment. We further pointed out the absence of any element of actionable discrimination which would obviate the Board's exclusive jurisdiction, or any denial of due process by the Board which would support judicial review of its award.

The application of these principles by the courts below, and the dismissal of the action for want of jurisdiction, were in complete conformity with the controlling decisions

of this Court. It is accordingly submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all other parties hereto by mailing copies thereof via United States mail, first class postage prepaid, addressed to each of the following attorneys of record:

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